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In re Application of
BARAK
U.S. Application No.: 10/595,170
PCT No.: PCT/IL04/00822
Int. Filing Date: 09 September 2004
Priority Date: 16 September 2003
Attorney Docket No.: 7044-X07-067
For: ORTHOPEDIC INSOLES FOR
PROTECTING THE METATARSAL
HEADS OF THE FOREFOOT

DECISION ON PETITION
UNDER 37 CFR 1.182

This decision is issued in response to applicant's "Request For Correction of Filing Receipt" filed 24 March 2008 and "Petition Under 37 CFR 1.181(a) to Withdraw The Holding of Abandonment" filed 01 December 2008. The petition seeks to correct the bibliographic data (international application number and title of invention) for the national stage application papers filed 16 March 2006, so as to allow such materials to be treated as the U.S. national stage of PCT/IL04/00822. For the reasons detailed below the filings are being treated as a petition under 37 CFR 1.182 to excuse applicant's error upon filing. The required \$400 petition fee has been charged to deposit account number 50-0601 as authorized.

BACKGROUND

On 09 September 2004, applicant filed international application PCT/IL04/00822, which claimed priority of an earlier application filed 16 September 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 March 2005. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 16 March 2006.

On 16 March 2006, applicant filed electronically a U.S. national stage application that included, among other materials, payment of the U.S. basic national fee. The submission was assigned U.S. application number 10/595,170.

On 21 December 2006, applicant was mailed a "Notification of Insufficient Fees (DO/EO/US) (Form PCT/DO/EO/923) informing applicant that an additional \$265.00 in fees was required. The notice identified the international application number as PCT/IB04/00822. Applicant was afforded two months to respond.

On 24 March 2008, applicant filed a request for corrected filing receipt indicating that the application was a U.S. National phase entry of international application PCT/IL04/00822.

On 24 July 2008, applicant was mailed a corrected filing receipt identifying the application as "a 317 of PCT/IL04/00822."

On 06 October 2008, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) for failure to respond to the Form PCT/DO/EO/923 mailed 16 March 2006.

On 01 December 2008, applicant filed the petition considered herein.

DISCUSSION

The materials filed 16 March 2006 included a Transmittal Letter to the United States Designated Office (DO/EO/US) Concerning a Submission that identified the application as a U.S. national stage of PCT/IB04/00822. The bibliographic data entered by applicants as part of the electronic filing also identified the application as a U.S. national stage of PCT/IB04/00822. Included in applicant's filing was an Application Data Sheet which claimed priority to international application PCT/IL2004/000822. Thus, applicants' 16 March 2006 filing included conflicting instruction that identified the submission as a U.S. national stage of two different international applications: PCT/IB2004/000822 and PCT/IL2004/000822.

Based on United States Patent and Trademark Office (USPTO) processing procedures, the application file was initiated in the USPTO PALM system as a U.S. national of PCT/IB2004/000822, the international application number set forth in the bibliographical data provided by applicant when filing the electronic application.

The bibliographical data provided by applicant incorrectly identified the international application to which the submission was directed. Correction of this error is required before the materials filed 16 March 2006 can be treated as having been directed to international application PCT/IL2004/000822, as necessary to avoid abandonment of the international application with respect to the United States.

Here, applicants confirm that the correct international application is PCT/IL2004/000822 and the petition further states that the correct international application number was listed on the Application Data Sheet filed 16 March 2006. Applicant's present submission included the required petition fee to correct applicant's clerical error. Accordingly, these materials satisfy the requirements for a grantable petition to correct applicant's error in the bibliographical data filed 16 March 2006 and to permit such materials to be treated as having been directed to international application PCT/IL2004/000822.

Since the Form PCT/DO/EO/923 was mailed prior to applicant being informed of the

conflict as to the underlying international application, it is considered premature.

CONCLUSION

Applicant's petition under 37 CFR 1.182 is **GRANTED**.

As requested, the international application number, title of invention, and continuity data have been corrected and are now associated with PCT/IL2004/000822.

The Forms PCT/DO/EO/923 and PCT/DO/EO/909 are hereby **VACATED**.

The materials filed 16 March 2006 have been assigned U.S. application number 10/595,170 and will be treated as the national stage of PCT/IL2004/000822.

This application is being forwarded to the United States Designated/Elected Office for further processing including consideration of the declaration filed 16 March 2006.

A handwritten signature in black ink, appearing to read 'Derek A. Putonen', is positioned above the typed name and title.

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